

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
AUGUST 6, 2013**

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Scott Hollinger, and Charles Lapp. Mark Hash and Cal Dyck had excused absences. Bailey Minnich, Erik Mack and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 23 people in the audience.

**APPROVAL OF
MINUTES**

Hollinger motioned and Klempel seconded to approve the May 7, 2013 minutes. The motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)**

None.

**FRED
MCKNIGHT
(FZV 13-02)**

A request by Fred McKnight, with technical assistance by Richard DeJana, for a Zoning Variance to property within the Caroline Point, R-2 (One-Family Limited Residential), Zoning District. The applicants are requesting variances to Section 3.10.040(3)(A), "Bulk and Dimensional Requirements," requiring structures to have a minimum front yard setback of 20 feet from the property line, and Section 2.07.040(3) "Changes Permitted to Non-Conforming Uses" which states structures conforming to use may not be altered or extended if it further deviates from the regulations, to allow for a newly constructed deck off an existing residential structure located directly on the property line. The new deck would expand the existing non-conforming structure, creating a zero (0) foot setback. The property is located at 357 Caroline Point Road.

STAFF REPORT

Minnich reviewed Staff Report FZV 13-02 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Rich DeJanna, represented the applicant. He handed out a packet to the board. He started to explain the contents of the packet which included letters from the public. He reviewed mistakes which had been made by the applicant. The mistakes

had been remedied by the takedown of parts of the deck which were in violation of the setbacks. He spoke about the zoning designation of the property which caused it to be nonconforming due to the square footage of the property, what was grandfathered and what was not grandfathered concerning the property, the history and definitions of fundamental rights concerning land use and what the house would look like with the deck cut back to the 20 foot setback from the lakeshore. He went on to talk about the attempt to abandon the road, if the property was a road, how the road was situated compared to the applicant's property, the original plat, the limitations of the property rights, the lack of alternatives to the situation established by zoning, the length the house had been in place and the issue of equal protection. He reviewed in depth a proposed set of findings of fact by the applicant.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

Dan Jenkins, 345 Caroline Point, was for the application.

Marc Liechti, 210 Capwa Court, handed the board a handout and was for the application.

Harry Smith, 210 Caroline Point, was in favor of the application.

Ron Hopkins, 301 Caroline Point, was in favor of the application.

**STAFF
REBUTTAL**

Grieve said the current zoning on the property was R-2. The staff report did not review if the current zoning was appropriate for the area. He gave the history of why the issue of the setback on the property came into play in the application. The property line was the property line and it didn't matter what the use of the property next door was. He reviewed what was grandfathered, considered a structure, considered the front of the lot, how the lot was situated, the determination the 'park' was a road, how the build in of the existing deck was considered the structure footprint and the addition of a deck was now considered a new footprint. He summarized the issue was where the property line was and what the setbacks were. The new deck violated the setback.

**APPLICANT
REBUTTAL**

DeJanna said under the regulations, since part of the road and park was together, he would have to agree the front of the lot was where Grieve indicated. He went on to explain what the need for

**BOARD
DISCUSSION**

setbacks was, why they did not apply to this property, and he felt the set back was an unreasonable restriction set in place by zoning. The job of the board was to make the unreasonable zoning reasonable and to do that they needed to grant the variance.

Lapp and staff discussed what would happen if the board denied the variance and what happened if the variance was approved.

Klempel clarified with staff and DeJanna what the board would be approving, the date of construction of the structure and if the word dock appeared on the deed to the property.

The board, DeJanna and staff discussed when the original plat was approved.

Lapp and staff discussed the status of construction of the deck, if the roofing would be able to be finished, how much a deck could be enclosed and still be defined as a deck and what qualified as an expansion of the structure footprint.

Hollinger and staff discussed if there was a difference between the definition of a road and a street in the zoning regulations and if the lake was considered private property.

The board, staff and DeJanna discussed what the low water line was, who took care of the park/road, who paid the property taxes on the park/road, if the county granted easements to the sewer district and if the county could grant an easement for the deck eave or grant an encroachment permit.

The board and staff discussed if a boundary line adjustment could be done, zoning in the county that was in place with non conforming lots, who owned the lot to the east of the property and what would happen with setbacks if the property next to the applicant's lot was determined to be either a park or road. They continued to discuss what would happen if a boundary line adjustment was done to the property to the east, what the setbacks would be if it was a corner lot, the intent of the road department for roads which were not paved, difficulties with property on the south side of Flathead Lake where property lines were determined by an out of state department without seeing the property and what the high water mark was.

The board, DeJanna and Grieve discussed why the road/park

was referred to as a park, if there was a separate legal description for the park, why the road was not abandoned, where the property line for McKnight was, what constituted the front of the lot and if there were other roads which were treated as parks.

Jed Fisher, Flathead County Parks and Recreation, said yes, there were others. Bigfork Dock, Beirney Creek in Lakeside and Lake Park Addition in Whitefish were three other roads which were treated as parks.

The board, Fisher and DeJanna discussed how the roads/parks were handled as far as management, the difficulties of such property, the number of other roads which people wanted to see dedicated as parks, the benefits of leaving the parcels as road, and what options had been considered by the county concerning the properties.

Hollinger spoke about the requirements which needed to be met in order for the board to grant a variance.

Klempel talked about the board's role concerning this situation.

Grieve reviewed what the board's role was in zoning and how to fix the problems created by zoning.

Hollinger read the findings of fact one by one and discussed them with staff.

Lapp and staff discussed what constituted a deck, the height of an acceptable deck and at what height a deck became part of the structure.

Hollinger and DeJanna discussed what the lower door below the deck accessed.

The board and Grieve discussed if the hardship was created by the applicant, if granting the variance would create a hardship to the neighbors and surrounding neighborhood, if a variance can be conditioned and the process of conditioning a variance.

**MAIN MOTION
TO ADOPT
F.O.F
(FZV 13-02)**

Hollinger made a motion seconded by Lapp to adopt staff report FZV 13-02 as findings-of-fact as amended.

**BOARD
DISCUSSION**

The board continued on to read and discuss each of the findings.

**SECONDARY
MOTION TO
(Amend F.O.F #1)**

Hollinger motioned and Klempel seconded to amend Finding of Fact #1 to read:

'The strict compliance of the regulations will limit the reasonable use of the property because the existing home was built along the property line which adjoined the public right of way and a smaller deck will inhibit the enjoyment and use of that property.'

**BOARD
DISCUSSION**

Grieve and the board discussed the proper way to proceed with process.

**ROLL CALL
VOTE TO
(Amend F.O.F. #1)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO
(Amend F.O.F #2)**

Hollinger motioned and Lapp seconded to amend Finding of Fact #2 to read:

'The strict compliance with the regulation will deprive the applicant of rights enjoyed by other properties similarly situated in the same district that have the ability to build decks adjoining their property in a reasonable configuration because other single family residences within the R-2 area have the ability to build decks that adjoin the home in a reasonable to use fashion.'

**BOARD
DISCUSSION**

Grieve and the board discussed how to craft a finding of fact.

**ROLL CALL
VOTE TO
(Amend F.O.F. #2)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO
(Amend F.O.F #3)**

Hollinger motioned and Klempel seconded to amend Finding of Fact #3 to read:

'The hardship is the result of a lot size and shape and topography over which the applicant has no control, the shape of the lot and the location of the home, the owner has no control over that and the control of a street being next to it and having a zero lot line the owner had no control over that and because of that they meet the

criteria for the hardship is a result of the lot shape size and location.'

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F. #3)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO
(Amend F.O.F #4)**

Hollinger motioned and Lapp seconded to amend Finding of Fact #4 to read:

'The hardship is peculiar to this property in its shape and location of the home and the access by which that home is arrived at and because of that peculiarity to this lot and its location and the right of way that's there that is intangible in its use meets the criteria of being peculiar to this particular property.'

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F. #4)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO
(Amend F.O.F #5)**

Hollinger motioned to amend Finding of Fact #5 to read:

'The hardship was not created by the applicant again the home was placed there previous to zoning on a zero lot line and because of that there is not a reasonable way to construct a deck that would service this home.'

The motion failed due to lack of a second.

**BOARD
DISCUSSION**

Klempel and Hollinger discussed if the hardship was created by the applicant, what the deck would look like and if that result was reasonable.

**BOARD
DISCUSSION**

Klempel and Hollinger briefly discussed conditioning architectural structures on other application properties such as screening shrubbery, down lighting and if it was appropriate to do that in this application.

**SECONDARY
MOTION TO
(Amend F.O.F #5)**

Hollinger motioned and Lapp seconded to amend Finding of Fact #5 to read:

'The hardship claimed by the applicant was not created by the applicant because the existing structure was located along a zero lot line and deviation from the present and existing use of that property would be an unusual hardship.'

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F. #5)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO
(Amend F.O.F #6)**

Hollinger motioned and Lapp seconded to amend Finding of Fact #6 to read:

'The hardship claimed by the applicant is not economic because compliance with the existing setbacks would alter the reasonable use and enjoyment of the property regardless of the cost.'

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F. #6)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board briefly discussed the issue with zoning.

Grieve clarified the board was not amending staff's report finding #7.

Minnich suggested the board make a motion to the fact they were not amending finding of fact #7.

**SECONDARY
MOTION TO
(Leave F.O.F #7)**

Hollinger motioned and Klempel seconded to keep Finding of Fact #7 as presented by staff.

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Leave F.O.F. #7)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO
(Amend F.O.F #8)**

Hollinger motioned and Lapp seconded to amend Finding of Fact #8 to read:

‘The variance requested is the minimum variance which will alleviate the hardship because any deviation from the present deck and structure would reduce the reasonable use and enjoyment of the home.’

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F. #8)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO
(Amend F.O.F #9)**

Hollinger motioned and Lapp seconded to amend Finding of Fact #9 to read:

‘The granting of the variance will not confer a special privilege that is denied other similar properties in the same district because it is unique in its location to the street and its construction on a zero lot line and that any other owners within that district can come and make an application for a variance.’

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
(Amend F.O.F. #9)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board briefly reviewed process.

**ROLL CALL TO
ADOPT F.O.F.
(FZV 13-02)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board and Grieve discussed process.

**MAIN MOTION
TO APPROVE
(FZV 13-02)**

Hollinger motioned and Lapp seconded to approve FZV 13-02 with the following conditions:

- 1. The deck remains in its present condition with the exception of completion of the roof, but that it remains as an open deck not to be enclosed.*
- 2. The applicant's attorney prepare an affidavit of notice of the variance to then be recorded through the Planning and Zoning Office subject to the ability of the Planning Office to record the document, otherwise it shall be recorded by the applicant.*
- 3. The eaves shall be removed or an encroachment permit shall be granted by Flathead County.*

**BOARD
DISCUSSION**

DeJanna said the record could reflect the applicant consented to the conditions.

The board, staff and DeJanna briefly discussed how variances followed property and was recorded.

**ROLL CALL TO
APPROVE AS
CONDITIONED
(FZV 13-02)**

On a roll call vote the motion passed unanimously.

**FALCON
DEVELOPMENT
INC
(FCU 13-04)**

A request by George Joseph on behalf of Falcon Development Inc., for a Conditional Use Permit to construct a multi-family dwelling in the Evergreen Zoning District, zoned RA-1 (Residential Apartment). The applicant is proposing an 8-unit apartment building on approximately 0.52 acres. The property is located just south of 215 Spruce Road.

STAFF REPORT

Mack reviewed staff report FCU 13-04 for the board.

**BOARD
QUESTIONS**

The board and Mack discussed resolved potential issues with setbacks, if there were any issues with pedestrians, bike traffic, if there would be any crossing for pedestrians and a change in agency comments which would affect the findings and conditions.

**APPLICANT
PRESENTATION**

None.

**PUBLIC
COMMENT**

None.

**BOARD
DISCUSSION**

The board briefly discussed the previous hearing on the project approximately one year ago.

**MAIN MOTION
TO AMEND
F.O.F. #9 AND
ADOPT F.O.F.
(FCU 13-04)**

Klempel made a motion amend finding of fact #9 to read:

'has been reviewed and approved by DEQ'

and adopt staff report FCU 13-04 as findings-of-fact.

The motion failed due to a lack of second.

**BOARD
DISCUSSION**

The board discussed wording for finding #9.

**MAIN MOTION
TO AMEND
F.O.F. #9 AND
ADOPT F.O.F.
(FCU 13-04)**

Hollinger made a motion seconded by Lapp to amend finding of fact #9 to read:

9. The proposed use is expected to minimally impact public water and sewer services because water and sewer service is available from the Evergreen Water and Sewer District, ~~the proposed use will require re review by DEQ, approval will be conditioned on this and followed up on at the end of one year.~~ *and the proposed use has been reviewed and approved by DEQ.*

and adopt staff report FCU 13-04 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
AMEND F.O.F.
#9 AND ADOPT
F.O.F.
(FCU 13-04)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO STRIKE
CONDITION #6
AND APPROVE
AS**

Hollinger motioned and Lapp seconded to strike Condition #6 and approve.

**CONDITIONED
(FCU 13-04)**

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
STRIKE
CONDITION #6
AND APPROVE
AS
CONDITIONED
(FCU13-04)**

On a roll call vote the motion passed unanimously.

**RX VENTURE
LLC
(FCU 13-05)**

A request by RX Venture LLC for a Conditional Use Permit to establish 'multiple principal uses' on a lot located in the 'LS – Lakeside' (Special Commercial) Zoning District at 7240 U.S. Highway 93 South in Lakeside. The applicant is proposing multiple businesses in one common structure containing 15,200 square feet and will provide 66 parking spaces.

STAFF REPORT

Mack reviewed staff report FCU 13-05 for the board.

**BOARD
QUESTIONS**

Hollinger and Mack briefly discussed if an alternate finding for the draining issue had been fashioned by Mack and Grieve.

**APPLICANT
PRESENTATION**

Mark Liechti, Apec Engineering, represented the applicant. He said the applicant agreed with the staff report, their only concern was the draining issue. He handed to the board handouts which depicted existing culverts and explained when the map was made, where the culverts were, and what the concerns with the current system were.

**PUBLIC
COMMENT**

Margaret Davis, 865 South Lakeside Boulevard, voiced concern over the drainage system.

Jere Newell, 755 Lakeside Boulevard, owned Lakeside Mercantile, voiced concern over the drainage system.

Deborah Sullivan, 252 Adams, voiced concern over the drainage system.

Dennis Reese, 125 Ben Williams Lane, voiced concern over the drainage system.

David Fetveit, was in favor of the application.

Mark Tanberg, 264 Blacktail Road, voiced concern over the drainage system and wanted the large trees to stay.

**STAFF
REBUTTAL**

Staff reviewed the DEQ process and requirements for the drainage plan, the fact a DEQ review was not in the original staff report and the process and benefits for having a condition concerning a voluntary DEQ review.

**APPLICANT
REBUTTAL**

Liechti explained how the applicant would do more than DEQ required and the review would be no problem.

Hollinger said newer technologies were available for drainage systems.

Keri VanCampen, applicant, said the quickest way to put herself out of business was to flood out the neighbors and she loved living in Lakeside. She was willing to do her part on her property as far as drainage. It was a huge burden to solve the neighboring properties' drainage issues as well. She was willing to be part of a team to take care of the problem. She didn't think it was fair to have all of the improvement on her shoulders. She would do what was needed and reasonable on her lot.

**BOARD
DISCUSSION**

The board and Liechti discussed if drainage tests had been done on the intersection at the property, if drainage was occurring, who owned and was responsible for maintaining the drainage across the road. They also discussed Bigfork's similar issue with drainage and the project they embarked on as a community to solve the problem, if the drainage review would be a catalyst for change, if there were filters on the Bigfork system, the problem of funding for a study and possible ways to improve the area.

Mack reviewed alternate findings and condition for the staff report.

The board, staff, Liechti and VanCampen discussed pros and cons of the alternate finding and condition concerning DEQ review, the existing known drainage system, potential outcomes of the review, the possible burden on the applicant, possible modifications of the condition, what the options of the board was and the timeframe for construction. They continued to debate possible findings and conditions and the pros and cons of a DEQ review.

Jed Fisher, Flathead County Parks and Recreation, voiced concern regarding ownership and maintenance of the system under the highway across from the park by the lake. He felt ownership and maintenance should be defined. The county was unable to cover the maintenance of the system.

The board and Fisher discussed possible remedies to the issue of maintenance and who was responsible for the Bigfork system.

The board and staff discussed how to craft another finding.

The board and VanCampen discussed the benefits and shortcomings of having a DEQ review as a condition to the permit and the improvement needed throughout the town.

The board and staff continued with discussion of alternate wording of conditions and findings, other properties which feed into the system and the fact the results should be shared with the community.

The board, Liechti, staff and VanCapmpen discussed if there was a way to guarantee the applicant would not be responsible for the upgrade if not approved, the purpose for the voluntary review, repercussions for a negative review, if there were pre-existing drainage issues, alternate wording for findings and conditions and what was possible for follow up on the conditions.

**MAIN MOTION
TO ADOPT
F.O.F.
(FCU 13-05)**

Lapp made a motion seconded by Hollinger to adopt staff report FCU 13-05 as findings-of-fact.

**SECONDARY
MOTION TO
Amend F.O.F. #9**

Hollinger made a motion seconded by Lapp to amend finding of fact #9 to read:

- ~~1. The proposed method of storm water management appears adequate because the applicant will extend the storm drainage system and the property will be required to be re-reviewed for appropriate storm water management, by DEQ, this can be a condition of approval and will be reviewed for compliance at the end of one year. The impact to storm water drainage of the proposed development will be adequately mitigated because based on concerns raised by the public, the~~

storm water system will be professionally engineered and constructed to an industry standard (DEQ 8).

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
Amend F.O.F. #9**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FCU 13-05)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO ADD
CONDITION #10
AND APPROVE
(FCU 13-05)**

Hollinger made a motion seconded by Klempel to add Condition #10 and approve.

10. *Storm water management shall be professionally engineered and constructed to an industry standard (DEQ 8) and designs provided to Flathead County Planning and Zoning Office for verification upon project completion.*

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADD
CONDITION #10
AND APPROVE
(FCU 13-05)**

On a roll call vote the motion passed unanimously.

OLD BUSINESS

None.

NEW BUSINESS

Hollinger, Valade and Grieve briefly discussed the agenda for September's BOA meeting.

ADJOURNMENT

The meeting was adjourned at approximately 10:10 pm. on a motion by Klempel. The next meeting will be held at 6:00 p.m. on September 3, 2013.

Scott Hollinger, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 9 / 3 / 13*